

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3 TRANS-SPEC TRUCK SERVICE, INC.
4 (Plaintiff)

5 vs.

6 CATERPILLAR, INC.
7 (Defendant)

8 CIVIL ACTION
9 NO. 0411836-RCL

10 INDIVIDUAL DEPOSITION OF ROBERT G.

11 BARTON, JR., a witness called on behalf of the
12 Defendant, pursuant to Federal Rule of Civil
13 Procedure, before Carolyn J. Rogers, certified
14 shorthand reporter and Notary Public in and for the
15 Commonwealth of Massachusetts, at the offices of
16 CAMPBELL CAMPBELL EDWARDS & CONROY, ONE CONSTITUTION
17 PLACE, BOSTON, MASSACHUSETTS, on TUESDAY, MAY 17,
18 2005, commencing at 9:30 a.m.

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20 85 Colonial Drive, Unit 202
21 Andover, Massachusetts 01810
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2 MR. GRUNERT: The witness is going to read
3 and sign the transcript under the pains and penalties
4 of perjury, but notarization of the signature is
5 waived. Objections except as to the form of the
6 question are reserved until the time of trial, and
7 motions to strike are reserved until the time of
8 trial.

9 THE VIDEOGRAPHER: We are now on the
10 record. The date is May 17, 2005. The time is
11 approximately 9:34 a.m. We are located in the
12 offices of Campbell, Campbell, Edwards and Conroy in
13 Boston, Massachusetts. The defendant in the case of
14 Trans-Spec Truck Services, Incorporated versus
15 Caterpillar, Incorporated, Civil Action No.
16 0411836RCL, will take the audiovisual deposition of
17 Mr. Robert Barton. My name is William Barton, no
18 relation to the defendant, of In-Court Technologies,
19 Boston, Massachusetts, and I am the videographer for
20 this deposition. The stenographer is Carolyn J.
21 Rogers of C. J. Reporting. At this time the
22 attorneys will introduce themselves for the record.

23 MR. GRUNERT: My name is John Grunert of
24 the firm of Campbell, Campbell, Edwards and Conroy.

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1 APPEARANCES:

2 JOHN A.C. GRUNERT, ESQUIRE
3 Campbell Campbell Edwards & Conroy
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6 (617) 241-4000/Fax (617) 241-5115
7 On Behalf of the Defendant Caterpillar, Inc.
8 CHRISTIAN G. SAMITO, ESQUIRE
9 Donovan Hatem LLP
10 Two Seaport Lane
11 Boston, MA 02210
12 (617) 406-4000/Fax (617) 406-4501
13 On Behalf of the Plaintiff
14 Trans-Spec Truck Service, Inc.

15 ALSO PRESENT:

16 William Barton, Videographer
17 In-Court Technologies

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	8 (Mr. Samito)	9 145, 194

10 EXHIBITS

11 NO.	12 DESCRIPTION	13 PAGE NO.
14 1	15 Photocopy of Electronic Calendar	16 12
17 2	18 Flysheet Housing Repair 2002-2004	19 18
20 3	21 Color Copies of Photographs	22 62
23 4	24 Photocopies of Photographs	25 134
26 5	27 Photocopies of Photographs	28 136
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1 I represent the defendant Caterpillar, Inc.

2 MR. SAMITO: Christian G. Samito of the
3 firm Donovan and Hatem, representing Mr. Barton and
4 Trans-Spec Truck Service, Inc.

5 THE VIDEOGRAPHER: The stenographer will
6 now swear in the witness.

7 ROBERT G. BARTON, JR.,
8 a witness called on behalf of the Defendant, having
9 first been satisfactorily identified by the
10 production of his driver's license and duly sworn by
11 the reporter/notary public, testifies and says as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. GRUNERT:

15 Q. State your full name for the record,
16 please?

17 A. Robert G. Barton, Jr..

18 Q. What is your date of birth, Mr. Barton?

19 A. 1/1/49.

20 Q. Where do you live?

21 A. 89 Central Street, West Boylston,
22 Massachusetts.

23 Q. Are you married?

24 A. Yes.

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1 Q. Do you have children?
2 A. Yes.
3 Q. Are you employed by Trans-Spec Truck
4 Service, Inc.?

5 A. Yes, I am.

6 Q. How long have you been employed by
7 Trans-Spec?

8 A. Since October of 2003.

9 Q. Who was your employer before October of
10 2003?

11 A. Santa Fuel.

12 Q. What was the first name?

13 A. Santa.

14 Q. As in Santa Claus?

15 A. As in Santa Claus.

16 Q. Gotcha.

17 A. Bridgeport, Connecticut.

18 Q. Is Santa Fuel -- or was Santa Fuel owned
19 or affiliated in any way with Joseph Howard?

20 A. No.

21 Q. Was it affiliated in any way with
22 Trans-Spec?

23 A. No.

24 Q. Is it accurate that you played no role in

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channeled it to --

(Witness nods head.)

Q. And did you receive a personal response or was it an automated response?

A. I received a response that someone from Southworth-Milton would be in touch with me.

Q. And then who responded from Southworth-Milton?

A. I received an e-mail from Jim Withrow from Southworth-Milton. Prior to that, I called Al Cardoza about it, and Al Cardoza told me the program no longer existed. And then I then -- the next day I received an e-mail from Jim Withrow explaining to me they have what's called an Advantage program for an additional 250,000 miles, or 200 miles.

Q. The next entry, "Freightliner re 7400 doing front structure first." Does that mean 7400 was still at Tri State during this time?

A. I believe so.

Q. So 7400 was in since September 8?

A. Yes.

Q. The next entry refers to East River.

"Billy told East River can't do work." What is East River?

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A. It's an oil company in Connecticut that we -- that Trans-Spec does transportation for.

Q. Why did Trans-Spec -- I'm assuming Billy is Billy Howard?

A. Yes. Billy is the dispatcher.

Q. Why did Billy at Trans-Spec say that Trans-Spec can't do work for East River?

A. I told him he didn't have the equipment to do it now. We had too many trucks down. And to be fair with the customer and let him know that we just couldn't handle it.

Q. Skipping one entry down to where it says, "Jim at CAT said bolts were covered. Jay and Bob present." Who is Jim?

A. Jim is the service manager, Withrow.

Q. Jim Withrow?

A. Withrow, yes.

Q. Where did this conversation take place?

A. Somebody had mentioned something about bolts weren't covered or something, and I -- when we went to pick up a truck, I says, "Jim what's the story? Are the bolts covered or not?" He says, "Of course they're covered."

Q. The last entry, "Gary check for flywheel

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cracks." Who is Gary?

A. He is one of the mechanics at night.

Q. What did you ask him to do?

A. I asked him to check the trucks over there and make sure what we had, that if we had anything that was broken, because they were coming apart too frequently and so many of them.

Q. Was this an occasional request that you made of mechanics?

A. Quite often.

Q. Why?

A. Because we're trying catch them before they would disintegrate. We were trying to keep up with them, because, unfortunately, when the flywheel cracks, if you can catch it before it takes the block with it, it's less of a job. Unfortunately, most of them that crack, they take the right-hand -- the corner of the block.

Q. So this was preventative maintenance or --

A. Yes.

Q. On September 30, 2004, it says "7400 back to CAT, exhaust leaking." Is that the 7400 that was out in early September?

A. Yes.

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Q. And it had been repaired and it had to go back to Caterpillar for further repair?

A. That's correct. I believe this vehicle sat at Freightliner so long that we finally ended up taking it to CAT because they had an opening. They fixed it. There happened to be an exhaust leak. We had to take it back.

Q. It says "Dropped off parts for 8300." Does that mean that 8300 was still in the shop since your September 7th entry?

A. Very possible. Obviously, they had a flywheel apart and before they put it back together, they noticed the clutch might have been bad, so we probably brought them out a new clutch. So when they were reassembling, they put the clutch in as well.

Q. Are you familiar with the repair history of Truck 6100 in early October 2004?

A. You'll have to refresh my memory. MR. SAMITO: Why don't we mark this. (Exhibit No. 6 marked for identification.)

Q. I show you Barton Exhibit 6, which is a four-page packet of photographs, and I'll describe the pages. One is dated October 6, 2004, one photograph on the page. There's another page that

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has two photographs dated October 8, 2004, another page that has four photographs dated October 6, 2004, and a final page with four photographs dated October 15, 2004. Do you recognize where these pictures were taken?

A. Yes.

Q. Where?

A. Freightliner in Shrewsbury, Massachusetts.

Q. Who took them?

A. I did.

Q. Where these for Truck 6100?

A. Yes.

Q. Does this refresh your memory?

A. Yes, it does.

Q. Can you describe what happened in early October 2004 regarding repair of Truck 6100?

A. I received a call from the Freightliner dealership that Al Cardoza had come out and inspected a truck and told the mechanics to put a new flywheel on it and put it back together and epoxy the block.

Subsequently, I went up there. The mechanic did not feel that this was suitable. The owner of Freightliner also was very concerned as to the fact that if they put it back together without

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replacing the block, it would just break again. But this was their instructions that they received from Caterpillar, which some squawking was done, and it was finally fixed properly by putting a new block in it and a flywheel.

Q. Who did the squawking?

A. I believe I started doing the squawking, and I believe Jay Howard did some squawking also.

Q. Who did you speak to regarding this issue?

A. I think I believe I spoke with Al Cardoza.

Q. Where did that conversation take place?

A. On the phone.

Q. What was the substance of that conversation?

A. Why are you trying to take advantage of us? The thing is warranted. You're going to put something back together and it's going to break again because you're not doing it properly.

Q. What did Mr. Cardoza say in response?

A. I don't even recall. It was a very heated discussion. Because all I know is, they fixed it properly and -- due to the diligence of the Freightliner dealership being honest with us.

Q. When you say "Freightliner," you

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consistently -- I should clarify for the record
 I in State Shrewsbury.

Q. Okay. "October 12, 2004, talked with Jim at MiltonCAT re setting up inspection. Will let me know. Maybe can be done at night." What inspection does this refer to?

A. These were the inspections for the Advantage program, the extended warranty that Caterpillar had available. The cost to us was \$55,920, and the stipulation was that every truck had to be inspected by them. There was a certain criteria it had to meet so it would be able to be basically insured or warranted with the extended warranty.

Due to our many trucks that were broken down, I had to try to make arrangements where we would have trucks available to deliver the product and have the minimal trucks in being tied up. And Jim was working this out with me, and the original plan was to do an inspection at night, but it didn't work that way.

Q. You earlier discussed language on the back of the sheet registering the serial numbers of the trucks with Al Cardoza. Do you recall when that

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conversation took place?

A. That was way back in October of 2003 when I first went there.

Q. That was in one of your first meetings with Mr. Cardoza?

A. Yes, that was at Truck Service when I first met him.

Q. That was at the very first meeting with Mr. Cardoza?

A. Yes, that's when I was introduced to him at the garage.

MR. SAMITO: I have no more questions.

MR. GRUNERT: I'm going to have a few. Just give me a minute.

REDIRECT EXAMINATION

BY MR. GRUNERT:

Q. Mr. Samito asked you about documents that Trans-Spec has related to these trucks beyond the ones that were included in Howard Exhibits 9 through 30. You referred to documents that Trans-Spec keeps at 7 Cristo Lane. What documents related to the trucks does Trans-Spec keep at 7 Cristo Lane?

A. I have no idea. Mostly mileage probably, anything to do with the way they run the office,

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receipts, payments.

Q. When you said "mileage," what did you mean by that?

A. Well, they had to keep track of mileage for fuel tax purposes. That is basically where the corporate office is.

Q. Now, what kind of records recording mileage on the trucks are kept?

A. Well, they have to claim so many miles for fuel tax purposes. I don't know exactly what kind of records are kept. There are some kind of records.

Q. Are the mileage records generated annually?

A. Couldn't tell you.

Q. But there are mileage records that record the mileage on each of these trucks on particular dates, and those are kept at the 7 Cristo Lane office; correct?

A. I don't know if they're on particular dates or if they're monthly, annually, quarterly. I really couldn't tell you.

Q. Well, whether they're monthly or annually or quarterly, they're on a particular date; it's just you don't know how many dates per year; correct?

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A. I have no idea.

Q. And the best you can do is tell me that those are mileage records?

A. I don't know what you'd call them. I'd say there has to be some kind of records so they can report their fuel use. So I would say they're mileage.

Q. Now, the receipts that you referred to that are kept at 7 Cristo Lane, what did you mean by that?

A. Let's say they buy a truck, they get a receipt; they buy a doughnut, they get a receipt. Any business gets receipts when they purchase things. So I would assume they would have receipts for items purchased, et cetera, et cetera.

Q. So at 7 Cristo Lane, there are receipts evidencing Trans-Spec's receipt of the trucks involved in this case; correct?

A. I would imagine, yes.

Q. And there are receipts there evidencing Trans-Spec's receipts of other trucks that it may have received between 2000 and 2005; correct?

A. I would imagine.

Q. And you referred to payments. What did

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you mean by payments?

A. Well, such if you paid to buy a flywheel housing, I'm sure there would be a receipt there of that.

Q. Well, so when you said "receipts" and when you said "payments," were you referring to the same type of documents?

A. Yeah, basically anything that money is expended for, I would assume you would get some type of receipt for it.

Q. All right. So stored at 7 Cristo Lane there are mileage records for each of the trucks involved in this case, receipts evidencing the receipt of the truck, of each of those 22 trucks, and then there are additional receipts evidencing parts or components for those trucks that Trans-Spec purchased; correct?

A. Parts, components, permits.

Q. Will there be things such as scale tickets or weight tickets kept at the 7 Cristo Lane location evidencing the weights that these various trucks were pulling on various occasions?

A. I really couldn't answer that question. I don't know.

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Q. Other than the mileage records and the receipts that are kept at 7 Cristo Lane, what other records related to these trucks are kept at that location?

A. Probably the fees for registration, overweight permits.

Q. I'm sorry, I missed the first one?

A. Overweight permits.

Q. Overweight permits.

A. Registrations.

Q. Bear with me here. I've seen references to overweight permits. When does a common carrier such as Trans-Spec obtain an overweight permit?

A. Every 12 months you have to have -- from the Massachusetts Department of Highways, you have a permit called an overweight permit. You also have to have an overweight permit to use the Massachusetts Turnpike. It's basically just another way of collecting money for the Commonwealth.

Q. This is Massachusetts.

A. Right.

Q. The overweight; is there a particular weight specified by the Commonwealth that if you're going to operate a vehicle on the highways of the

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